

**OFFICE OF EPIDEMIOLOGY (OEPI)
DIVISION OF PHARMACY SERVICES (DPS)
109 GOVERNOR STREET
RICHMOND, VIRGINIA 23219**

MEMORANDUM OF UNDERSTANDING (MOU)

MOU Number: [REDACTED]

- I. PARTIES TO THE AGREEMENT:** This Memorandum of Understanding is entered into by [REDACTED], [REDACTED] hereinafter called the “Contractor” and Commonwealth of Virginia through the Department of Health, Office of Epidemiology, Division of Pharmacy Services, 101 N 14th Street, Richmond, Virginia 23219 hereinafter called the “Department.”
- WHEREAS,** The Department desires to enter into an Agreement with the Contractor, where the Department may provide albuterol, epinephrine, and/or valve holding chambers with or without masks for public schools pursuant to an order placed by the Contractor and;
- WHEREAS,** The Contractor desires to place orders to be maintained at the public schools as undesignated stock for use in emergencies per [§ 22.1-274.2 \(D\)](#);
- THEREFORE,** in consideration of their respective undertakings, the Department and the Contractor hereby covenant and agree to the following terms.
- II. PERIOD OF PERFORMANCE:** From execution date of VDH signature on last page through **June 30, 2027**, with no renewals in accordance with Section VI, Terms and Conditions, Item H.
- III. PURPOSE:** The Virginia Department of Health (VDH) and the Virginia Department of Education (DOE) have implemented a policy for each school board to utilize for possession and administration of undesignated stock of epinephrine auto-injectors, albuterol inhalers and valved holding chambers (i.e. spacer) in every public school in the local school division. Pursuant to the Code of Virginia, each school must hold an order authorized by the local health department and ensure that those who would be administering these medications are properly trained. School divisions may use their identified funding.
- IV. SCOPE OF SERVICES:**
- Contractor will:*
1. Implement policies, procedures, and protocols for the use of emergency undesignated stock of epinephrine, albuterol, and valved holding chambers in schools.
 2. Ensure proper training of school personnel, employees of a local governing body, or an employee of a local health department in the administration of epinephrine and/or albuterol should be conducted on an annual basis by a Registered Nurse or their designee.
 3. Attest that training of school staff has been completed.
 4. Ensure and retain that a current standing order is updated for all staff.
 5. Retain a copy of the executed agreement.
 6. Place orders online for school use, providing the MOA number on page 1 of the executed agreement.

7. Store all items in a secure location with medication clearly marked, and accessible in the health office during school hours and monitored under the direct supervision of the designated and trained personnel. No items should be transferred outside of the original order.
8. Approve the purchase order, which will be prepared based on the order request and which will have the final cost information.
9. Track shipment and notify the Department if there is an issue with receipt.
10. Pay invoice within 30 days of receipt.
11. Utilize the online return form to ship all recalled, expired, or unused items back to the Virginia Department of Health Pharmacy Services.

Department will:

1. Retain a copy of the standing order for the school along with the executed agreement.
2. Receive order requests after order is submitted online by the Department.
3. Provide a purchase order and send to Department for review and approval.
4. Provide albuterol, epinephrine, valve holding chambers with or without masks for public schools and/or other items as identified if available.

V. COMPENSATION: The Contractor will reimburse the Department for actual expenditures as a result of the products provided under the terms of the basic agreement. The Department will process the requested order and the Contractor will remit based on Department provided invoice.

VI. TERMS AND CONDITIONS:

- A. AUDIT:** The Contractor shall retain all books, records, and other documents relative to this agreement for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Department, its authorized agents, and/or state auditors shall have full access to and the right to examine any of said materials during said period.
- B. APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth. The Department and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § [2.2-4366](#)). ADR procedures are described in Chapter 9 of the Vendors Manual. The Contractor shall comply with all applicable federal, state, and local laws, rules and regulations.
- C. AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the department shall be bound hereunder only to the extent that the legislature has appropriated funds that are legally available or may hereafter become legally available for the purpose of this agreement.
- D. CANCELLATION OF AGREEMENT:** The department reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may also be terminated by the Contractor, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.
- E. CHANGES TO THE AGREEMENT:** The parties may agree in writing to modify the scope of the Memorandum of Agreement. An increase or decrease in the price to the memorandum of Agreement resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Memorandum of Agreement.

- F. CONFIDENTIALITY OF PROPRIETARY INFORMATION AND PERSONALLY IDENTIFIABLE INFORMATION:** The Contractor assures that information and data obtained as to proprietary information and personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the Department's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store proprietary information or personally identifiable information as part of the performance of an agreement are required to safeguard this information and immediately notify the Department of any breach or suspected breach in the security of such information. Contractors shall allow the Department to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.
- G. IMMIGRATION REFORM AND CONTROL ACT OF 1986:** Applicable for all contracts over \$10,000: By entering into a written contract with the Commonwealth of Virginia, the Contractor certifies that the Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- H. RENEWAL OF AGREEMENT:** This agreement may not be renewed.
- I. ANTI-DISCRIMINATION:** By submitting this agreement Contractor certifies to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § [2.2-4311](#) of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § [2.2-4343.1E](#)).

In every contract over \$10,000 the provisions in 1. and 2. below apply:

1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
 - e. The requirements of these provisions 1. and 2. are a material part of the contract. If the Contractor violates one of these provisions, the Commonwealth may terminate the affected part of this contract for

breach, or at its option, the whole contract. Violation of one of these provisions may also result in debarment from State contracting regardless of whether the specific contract is terminated.

- f. In accordance with Executive Order 61 (2017), a prohibition on discrimination by the contractor, in its employment practices, subcontracting practices, and delivery of goods or services, on the basis of race, sex, color, national origin, religion, sexual orientation, gender identity, age, political affiliation, disability, or veteran status, is hereby incorporated in this contract.
2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Contractor or vendor.

J. PAYMENT:

1. To Prime Contractor:
 - a. Invoices for items ordered, delivered, and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges which appear to be unreasonable will be resolved in accordance with Code of Virginia, § 2.2-4363 and -4364. Upon determining that invoiced charges are not reasonable, the Commonwealth shall notify the Contractor of defects or improprieties in invoices within fifteen (15) days as required in Code of Virginia, § 2.2-4351,. The provisions of this section do not relieve a department of its prompt payment obligations with respect to those charges which are not in dispute (Code of Virginia, § 2.2-4363).
2. To Contractors:
 - a. Within seven (7) days of the Contractor's receipt of payment from the Commonwealth, a Contractor awarded a contract under this solicitation is hereby obligated:
 1. To pay the Contractor(s) for the proportionate share of the payment received for work performed by the Contractor(s) under the contract; or
 2. To notify the department and the Contractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
 - b. The Contractor is obligated to pay the Subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the

primary contract. A Contractor's obligation to pay an interest charge to a Contractor may not be construed to be an obligation of the Commonwealth.

1. Each prime Contractor who wins an award in which provision of a SWaM procurement plan is a condition to the award, shall deliver to the contracting department or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from Contractor default) with the SWaM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the department or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
3. The Commonwealth of Virginia encourages Contractors and Subcontractors to accept electronic and credit card payments.

K. ASSIGNMENT OF AGREEMENT: An agreement shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

L. DEFAULT: In case of failure to deliver goods or services in accordance with the agreement terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

M. INSURANCE: By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the contract is awarded. For construction contracts, if any Contractors are involved, the Contractor will have workers' compensation insurance in accordance with §§ [2.2-4332](#) and [65.2-800](#) et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any Subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Department shall be added as an additional insured to the policy by an endorsement.
4. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor (or third party owner of such motor vehicle.)

PROFESSIONAL SERVICES - Health Care Practitioner (to include Dentists, Licensed Dental Hygienists, Optometrists, Registered or Licensed Practical Nurses, Pharmacists, Physicians, Podiatrists, Chiropractors, Physical Therapists, Physical Therapist Assistants, Clinical Psychologists, Clinical Social Workers, Professional Counselors, Hospitals, or Health Maintenance Organizations.)

Code of Virginia [§ 8.01-581.15](#)

N. NONDISCRIMINATION OF CONTRACTORS: A Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, faith-based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from

which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

- O. WHISTLEBLOWER PROTECTIONS:** Congress has enacted the whistleblower protection statute 41 U.S.C. Section 4712 to encourage employees to report fraud, waste, and abuse without repercussions. This statute applies to all employees working for Contractors, grantees, Contractors, and sub grantees in accordance with this agreement. All Contractors, grantees, sub grantees, and Subcontractors for federal grants and contracts are required to:
1. Inform their employees in writing of the whistleblower protections under 41 U.S.C. Section 4712 in the predominant native language of the workforce, to include the specific requirements of the statute, and
 2. Include this term and condition in any agreement made with a Contractor or sub grantee.
 3. The employees' rights under 41 U.S.C. Section 4712 shall survive termination of this agreement.
- P. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so, required by [Title 13.1](#) or [Title 50](#) of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contact with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under [Title 13.1](#) or [Title 50](#), to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
- Q. CIVILITY IN STATE WORKPLACES:** The contractor shall take all reasonable steps to ensure that no individual, while performing work on behalf of the contractor or any subcontractor in connection with this agreement (each, a "Contract Worker"), shall engage in 1) harassment (including sexual harassment), bullying, cyber-bullying, or threatening or violent conduct, or 2) discriminatory behavior on the basis of race, sex, color, national origin, religious belief, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or disability.

The contractor shall provide each Contract Worker with a copy of this Section and will require Contract Workers to participate in agency training on civility in the State workplace if contractor's (and any subcontractor's) regular mandatory training programs do not already encompass equivalent or greater expectations. Upon request, the contractor shall provide documentation that each Contract Worker has received such training.

For purposes of this Section, "State workplace" includes any location, permanent or temporary, where a Commonwealth employee performs any work-related duty or is representing his or her agency, as well as surrounding perimeters, parking lots, outside meeting locations, and means of travel to and from these locations. Communications are deemed to occur in a State workplace if the Contract Worker reasonably should know that the phone number, email, or other method of communication is associated with a State workplace or is associated with a person who is a State employee.

The Commonwealth of Virginia may require, at its sole discretion, the removal and replacement of any Contract Worker who the Commonwealth reasonably believes to have violated this Section.

This Section creates obligations solely on the part of the contractor. Employees or other third parties may benefit incidentally from this Section and from training materials or other communications distributed on this topic, but the Parties to this agreement intend this Section to be enforceable solely by the Commonwealth and not by employees or other third parties.

VII. CONFIDENTIALITY TERMS AND CONDITIONS:

- A. DATA PRIVACY:** In accordance with [§ 2.2-2009](#) of the Code of Virginia, during the performance of this contract, Contractor is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy.
- B. CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:** The contractor assures that information and data obtained as to personal facts and circumstances related to patients or clients will be collected and held confidential, during and following the term of this agreement, and unless disclosure is required pursuant to court order, subpoena

or other regulatory authority, disclosure will not be divulged without the individual's and the agency's written consent, and only in accordance with federal law, including the HIPAA Privacy rule or the Code of Virginia.

Contractors who utilize, access, or store personally identifiable information (PII), protected health information (PHI), and electronic protected health information (ePHI), in performance of a contract, and in support of the HIPAA Privacy and Security regulations, are required to safeguard PII and PHI by:

- a. implementing appropriate safeguards to prevent unauthorized use or disclosure of the information, including implementing requirements of the HIPAA Security Rule with regard to ePHI,
 - b. ensuring that any subcontractors the contractor may engage on its behalf, and will have access to PHI, agrees to the same restrictions and conditions that apply to the business associate with respect to such information, and
 - c. immediately notifying the agency of any breach, or suspected breach, in the security of such information.
- Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

C. CONFIDENTIALITY OF HEALTH RECORDS:

By signature on this agreement, the Contractor agrees to comply with all applicable statutory provisions and regulations of the Commonwealth of Virginia and in the performance of this agreement (agreement) shall:

1. Not use or further disclose health records other than as permitted or required by the terms of this agreement or as required by law;
2. Use appropriate safeguards, as defined by HIPAA the Privacy and Security Rules to prevent use or disclosure of health records other than as permitted by this agreement;
3. Report to the Department of Health any use or disclosure of health records not provided for by this Agreement;
4. Mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of health records by the Contractor in violation of the requirements of this agreement;
5. Impose the same requirements and restrictions contained in this agreement on its subcontractors and agents;
6. Provide access to health records contained in its records to the Department of Health, in the time and manner designated by the Department of Health, or at the request of the Department of Health, to an individual in order to afford access as required by law;
7. Make available health records in its records to the Department of Health for amendment and incorporate any amendments to health records in its records at the Department of Health request; and
8. Document and provide to the Department of Health information relating to disclosures of health records as required for the Department of Health to respond to a request by an individual for an accounting of disclosures of health records.

The contractor shall provide evidence of compliant and ongoing internal control of sensitive and/or private data and processes through a standard methodology, including the Health Insurance Portability and Accountability Act (42 USC Sec. 1320D et seq., the federal rules adopted thereunder (45 CFR Parts 160, 162 and 164, as applicable), and the American Institute of Certified Public Accountant (AICPA) Service Organization Control (SOC) Reports. The evidence of compliance shall be contained in a report describing the effectiveness of the contractor's internal controls. There shall be an appropriate separate instrument, i.e., a business associate agreement (BAA), executed between the parties further protecting the privacy and security of data."

VIII. METHOD OF PAYMENT: The Contractor shall pay the Department for total invoiced amount within 30 days after invoice or delivery per the tracking information.

Payment will be made in accordance with the Prompt Payment Act of Virginia by check or EDI to: Virginia Department of Health
Shared Business Services Population Health A/P, 11th Floor

(Attn: Pharmacy)
PO Box 2448
Richmond, VA 23218-2448

IX. STATUS OF PERSONNEL: Amanda Ford, Program Specialist, has been designated as the Department administrator for this Agreement.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be duly executed intending to be bound thereby. This Memorandum of Understanding becomes effective on the date of the last signature.

Contractor (Authorized Representative of the School Division)

VDH/Office of Epidemiology

Signature and Date

Signature and Date

Name (printed)

Name (printed)

Title (Printed)

Title (printed)

DUNS#: _____

<https://www.dnb.com/duns-number/lookup.html>

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, sexual orientation, gender identity, political affiliation, or veteran status or any other basis prohibited by state law relating to discrimination in employment.